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90-226

Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

CAROL A. DAVIS,

PETITIONER

vs.

CITY OF SPOKANE,

RESPONDENT

PETITION FOR A WRIT OF CERTIORARI

FOR THE CITY OF SPOKANE

PETITIONER:
CAROL A. DAVIS
N. 7801 Yale
Spokane, WA 99207
509 483-3531

RESPONDENT:
ROBERT JALOVI, CITY PROSECUTOR
Sixth Floor Municipal Bldg.
W. 808 Spokane Falls Blvd.
Spokane, WA 99201
509 456-2658

QUESTIONS PRESENTED

1. WAS THE SPEEDY TRIAL RULE VIOLATED?

2. WAS COUNSEL OF CHOICE DENIED?

3. WAS THERE JURISDICTION OR LACK OF PROBABLE CAUSE FOR A STOP?

4. WERE RIGHTS "SUA SPONTE" DENIED?

5. WAS JUDGE TANKSLEY BIASED AND PREJUDICED?

6. WAS COMMON LAW TRIAL DENIED?

7. WAS JURY TRIAL OF 12 DENIED?

8. WAS DUE PROCESS DENIED?

9. WAS THERE LACK OF RELIABLE WITNESSES DUE TO PERJURY OF POLICE AND JAIL OFFICERS?

10. IS THE BAR ASSOCIATION A MONOPOLY PREVENTING DEFENDANTS FROM HAVING LAY COUNSEL REPRESENT THEM IN COURT?

11. IS DRIVING A RIGHT AND NOT A PRIVILEGE?

12. DID POLICE USE EXTORTION AND THREAT TO OBTAIN SIGNATURES?

13. WAS THIS AN ILLEGAL STOP, SEARCH & SEIZURE?

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

In re: CAROL A. DAVIS,

PETITIONER

vs.

THE CITY OF SPOKANE
THE STATE OF WASHINGTON,

Respondent

PETITION FOR WRIT OF CERTIORARI
(COMMON LAW)

TO THE HONORABLE JUSTICES OF THE UNITED STATES SUPREME COURT, WASHINGTON, D.C.

I

After a jury trial and verdict/judgments were rendered against the petitioner on October 21, 1988, she has applied to the Superior Court, County of Spokane, State of Washington on appeal of said decisions. The Superior Court denied her appeal

by Judge John A. Schultheis on February 17 1989, and by Judge Michael E. Donohue on March 7, 1989 Ms. Davis appealed to the Court of Appeals of the State of Washington, Division III, and her Motion for Discretionary Review was denied by Frank V. Slak, Jr., Commissioner on July 26, 1989. Ms. Davis' Motion to Modify the Commissioner's Ruling of July 26, 1989, was denied by Philip J. Thomas. Chief Judge on September 15th, 1989. The next level of appeal by Ms. Davis was the Supreme Court of the State of Washington with a Motion for Discretionary Review which was denied by Commissioner Crooks on November 17, 1989. Whereupon Ms. Davis submitted a Motion to Modify Commissioner's Ruling which was denied by Chief Justice Keith M. Callow on February 7, 1990. Copies of these decisions are attached hereto and made a part hereof; as Exhibit A thru H.

II

Petitioner herein seeks to have the above named Court review on Writ of Certiorari (Common Law) the above judgment/verdict from said trial of Ms. Davis on October 21, 1988 and to make and enter judgment declaring that the respondent acted in excess of jurisdiction and in gross error in this action and that such judgment and verdict is thus void and unenforceable.

That the petition of Carol A. Davis of the City of Spokane, respectfully pursuant to the provisions of Section 1651(a), Title 28 USC, 2101(d). Title 28 USC and Rules of the United States Supreme Court 10 and 21.4 for a Writ of Certiorari (Common Law) to review a judgment/ verdict of the Honorable Raymond Tanksley Judge of the Municipal Court, City of Spokane State of Washington, under which judgment/verdict Respon dent was prosecutor In support of this applica- tion, Petitioner states:

III

That based on the following Issues Constitut-ional violations have occured that gravely affect all of the Citizens of the United States. SPEEDY TRIAL RULE VIOLATION: CrRLJ 3.3(c)(1), WA. Court Rules Art. 1, Sec. 10, 22, 29, 30, 32 of the Washington State Constitution Art. I, VI VII, IX, XIV of the Bill of Rights and RCW 9A.80.010 Official Misconduct are applicable;

COUNSEL OF CHOICE: Art. 1, Sec. 2, 4, 22, 29, 30, 32 of the Washington State Constitution, Art. I, VI, IX, XIV of the Bill of Rights and RCW 46 63. 080 Counsel -Rules of Procedure are applicable;

JURISDICTION LACK OF PROBABLE CAUSE FOR STOP: Art. 1, Sec.5, 7, 9, 29, 30, 32 of the Washington State Constitution; Art. I, IV, IX, XIV of the Bill of Rights; CrRLJ 7.4(a)(3), SMC 16.61.022, RCW 7.80.005, 7.80.90, 9A.46.020, 46.20.190 are applicable;

RIGHTS "SUA SPONTE" DENIED: Art. 1, Sec. 6, 29, 30, 32 of the Washington State Constitution; Art. V,

IX, XIV of the Bill of Rights, and CrRLJ 4.71(1) (i) & (viii), 6.14, 8.9(b) are applicable;

COMMON LAW TRIAL DENIED: Art. 1, Sec. 2, 29, 30, 32 of the Washington State Constitution; Art V, VI, VII, IX, XIV of the Bill of Rights are applicable;

JURY TRIAL OF 12 DENIED: Art. 1, Sec. 2, 20, 30, 32, of Washington State Constitution; Art. V, VI, VII, IX XIV of the Bill of Rights are applicable;

DUE PROCESS DENIED: Art. 1, Sec. 3, 6, 29, 30, 32 of the Washington State Constitution; Art. V, VI, VII, IX, XIV of the Bill of Rights; RCW 19.86, 7.80.90, 7.80.005, 46.63.080; CrRLJ 4.7191)(i) & (viii) 7.4(a)(3), 8.9(b) and RALJ 9.1(e) are applicable

PERJURY OF POLICE-Jail Officers/LACK OF RELIABLE WITNESS: Art. 1, Sec. 6, 29, 30, 32 of the Washington State Constitution; Art. IX, XIV of the Bill of Rights; RCW 9A.72.020, 9A.72.040, 9A. 80.010; CrRLJ 6.14, 7.4(a)(3); Rule 1.2(d) Model

Rules of Professional Conduct; Cannons of Profes sional Ethics, Canon No. 32; Model Code of Professional Responsibility (1980), Disciplinary Rule 7-102(a)(4)(7); RCW 9.72.090, 9A.72 are applicable;

BAR ASSOCIATION/MONOPOLY: Art. 1, Sec. 2, 4, 5, 8, 12, 29, 30, 32, Art. 12, Sec. 22 Washington State Constitution; Art. VI, IX, XIV of the Bill of Rights, RCW 19.86 Unfair Business Practices, 46.63.080 Counsel; Black's Law Dictionary, Abridged 5th Ed. (1983), pg. 521, RE: Sherman Anti-Trust Act are applicable;

DRIVING IS A RIGHT, NOT A PRIVILEDGE: Art. 1., Sec. 2, 29, 30, 32, Art. 12, Sec. 22 Washington State Constitution; Art. IV, IX, XIV of Bill of Rights, SMC 16.61.022 are applicable;

EXTORTION & THREAT BY POLICE TO OBTAIN SIGNATURE: Art. 1, Sec. 2,7,9,29,30 of Washington State Constitution; Art. IV, V, IX, XIV of the Bill of Rights; RCW 9A.56.130, 9A.04.110, 9A.60.030, 7.80.

160, 9A.46.020, 9A.80.010 are applicable

ILLEGAL STOP, SEARCH & SEIZURE Art. 1, Sec. 7, 29, 30, 32 of Washington State Constitution; Art. IV V, IX, XIV of the Bill of Rights; RCW 9A.56.130, 9A.04.110, 9A.60,030. 9A 46.020. 9A.80.010 are applicable;

VIOLATION OF THE U.S. CONSTITUTION by State Statutes: Art. 1, Sec. 8, 21,29,30,32; Art.12, Sec 22 of the Washington State Constitution, Art. IV, V, VI, VII, IX, XIV of the Bill of Rights; RCW 7.80. 160, 19.86 46 20.190 are applicable;

MIRANDA WARNINGS DENIED before Field Sobriety Tests: Art. 1, Sec. 2, 3, 6, 7, 9,29,30,32 of the Washington State Constitution; Art IV, V, IX, XIV of the Bill of Rights; RCW 9A.46.020, 9A.80.010 are applicable;

PREJUDICIAL ERROR OF JURY INSTRUCTION NO. 7; Art.1, Sec. 2, 9, 29,30 of the Washington State Constitution; Art. IV, V, IX, XIV of the Bill of Rights; RCW 9A.80.010; CrRLJ 8.9(b). RALJ 9.1(e),Evidence,

2nd Ed. State and Fed. Rules, Paul F. Rothstein, Chptr 1, pg. 6, 2nd paragraph; House Bill Report EHB 1459, passed 2/13/86, are applicable; TAMPERING WITH WITNESSES/DISCOVERY HAMPERED-DENIED. Art. 1, Sec. 3, 6, 29,30 of Washington State Constitution; Art. V, VI, IX, XIV of the Bill of Rights; RCW 9A.72.120, 9A.80.010; CrRLJ 4.71(1)(i) & (viii), CrRLJ 6.14; Rule 1.2(d) Model Rules of Professional Conduct; Canon No. 32 of Canons of Professional Responsibility (1980); Evidence, 2nd Ed. State & Fed. Rules, Paul F. Rothstein, Chptr.1, pg. 10, last paragraph.

IV

Facts necessary to an understanding of the issues presented by this application are as follows: Petitioner was charged with Speeding, Driving While Intoxicated and Failure To Sign an Infraction and found to have committed these charged allegations by judgment/verdict. However, these allegations are unconstitutional as they were

beyond the jurisdiction of the said court and would have constituted a giving up one right for another in several instances. Errors were committed by the presiding judge and the prosecutor in hearings and at time of trial and due process was denied this petitioner violating the U.S. Constitution. Consequently, such judgment/verdict, under the provisions of Rule 59(d) of the Federal Rules of Civil Procedure, as in excess of the jurisdiction of respondent and is thus reviewable on a Writ of Certirorari by the above-named Court.

V

The reasons a Writ of Certiorari should issue herein are that the petitioner, Carol A. Davis, has exhausted the remedies available to her and this is the Court the sole remedy available to petitioner to obtain a review of the judgment/verdict declaring the preceeding judgment/verdict to be void and unenforceable.

Attached to this petition as Appendix & Exhibits

and incorporated by reference are Appendix 1a thru 8a and Exhibits A thru H, in which documents are set forth include the decisions of the lower appellate courts.

Wherefore petitioner requests that the above-named Court of/for the United States review the judgment/verdict in the case of the City of Spokane vs. Carol A. Davis No. DO 53343 and order a Writ of Certiorari to issue herein to respondent, the Honorable Raymond Tanksley, Judge of the Municipal Court, City of Spokane, State of Washington, commanding respondent to set aside and annul the judgment/verdict referred to and to dismiss all charges against petitioner, Carol A. Davis, and granting petitioner such other and further relief as the court may deem proper.

DATED this 14th day of May, 1990.

Carol A. Davis

Carol A. Davis/Petitioner
N. 7801 Yale
Spokane, WA 99207-3449
(509) 483-3531

APPENDIX

AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES- BILL OF RIGHTS

AMEND. I FREEDOM OF RELIGION, OR SPEECH, AND OF THE PRESS. Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof: or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

AMEND. IV SECURITY FROM UNWARRANTABLE SEARCH AND SEIZURE. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMEND. V RIGHTS OF ACCUSED IN CRIMINAL PROCEEDINGS. No person shall be held to answer tor a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation.

AMEND. VI RIGHT TO SPEEDY TRIAL, WITNESSES, ETC. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of

the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining wintesses in his favor, and to have the assistance of counsel for his defense.

AMEND. VII TRIAL BY JURY IN CIVIL CASES.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.

AMEND. VIII BAILS, FINES, PUNISHMENTS.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

AMEND. IX RESERVATION OF RIGHTS OF THE PEOPLE. The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

AMEND. XIV, SEC. 1. CITIZENSHIP RIGHTS NOT TO BE ABRIDGED BY STATES. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

WASHINGTON STATE CONSTITUTION

ARTICLE 1 SEC. 2 SUPREME LAW OF THE LAND.

The Constitution of the United States is the supreme law of the land.

ARTICLE 1, SEC. 3 PERSONAL RIGHTS. No person shall be deprived of life, liberty, or property, without due process of law.

ARTICLE 1, SEC. 4 RIGHT OF PETITION AND ASSEMBLAGE. The right of petition and of the people peaceably to assemble for the common good shall never be abridged.

ARTICLE 1, SEC. 5 FREEDOM OF SPEECH. Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that right.

ARTICLE 1, SEC. 7 INVASION OF PRIVATE AFFAIRS OR HOME PROHIBITED. No person shall be disturbed in his private affairs, or his home invaded, without authority of law.

ARTICLE 1, SEC. 8 IRREVOCABLE PRIVILEGE, FRANCHISE OR IMMUNITY PROHIBITED. No law granting irrevocably any privilege,

franchise or immunity, shall be passed by the legislature.

ARTICLE 1, SEC. 9 RIGHTS OF ACCUSED PERSONS. No person shall be compelled in any criminal case to give evidence against himself, or be twice put in jeopardy for the same offense.

ARTICLE 1, SEC. 10 ADMINISTRATION OF JUSTICE. Justice in all cases shall be administered openly and without unnecessary delay.

ARTICLE 1, SEC. 12 SPECIAL PRIVILEGES AND IMMUNITIES PROHIBITED. No law shall be passed granting to any citizen, class of citizens or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens or corporations.

ARTICLE 1, SEC. 21 TRIAL BY JURY. The right of trial by jury shall remain inviol

ate, but the legislature may provide for a jury of any number less than twelve in courts not of record, and for a verdict by nine or more jurors in civil cases in any court of record, and for waiving of the jury in civil cases where the consent of the parties interested is given thereto.

ARTICLE 1, SEC. 22 RIGHTS OF THE ACCUSED. In criminal prosecutions the accused shall have the right to appear and defend in person or by counsel, to demand the nature and cause of the accusation against him, to have a copy thereof, to testify in his own behalf, to meet the witnesses against him face to face, to have compulsory process to compel the attendance of witnesses in his own behalf, to have a speedy public trial by an impartial jury of the county in which the offense is charged to have been committed and the right to appeal in

all cases; provided, the route traversed by any railway coach, train or public conveyance, and the water traversed by any boat shall be criminal districts; and the jurisdiction of all public offenses committed on any such railway car, coach, train, boat or other public conveyance, or at any station or depot upon such route, shall be in any county through which the said car, coach, train, boat or other public conveyance,, or at any station or depot upon such route, shall be in any county through which the said car, coach, train, boat or other public conveyance may pass during the trip or voyage, or in which the trip or voyage may begin or terminate. In no instance shall any accused person before final judgment be compelled to advance money or fees to secure the rights herein guaranteed.

ARTICLE 1, SEC. 29 CONSTITUTION MANDATORY. The provisions of this Constitution are mandatory unless by express words they are declared to be otherwise.

ARTICLE 1, SEC. 30 RIGHTS RESERVED. The enumeration in this Constitution of certain rights shall not be construed to deny those retained by the people.

ARTICLE 1, SEC. 32 FUNDAMENTAL PRINCIPLES. A frequent recurrence to fundamental principles is essential to the security of individual right and the perpetuity of free government.

ARTICLE 12, SEC. 22 MONOPOLIES AND TRUSTS. Monopolies and trusts shall never be allow ed in this state, and no incorporated company, copartnership, or association of persons in this state shall directly or indirectly combine or make any contract with any other incorporated company,

foreign or domestic, through their stockholders, or the trustees or assignees of such stockholders, or with any copartnership or association of persons or in any manner whatever for the purpose of fixing the price or limiting the production or regulating the transportation of any product or commodity. The legislature shall pass laws for the enforcement of this section by adequate penalties and in case of incorporated companies, if necessary for that purpose, may declare a forfeiture of their franchises.

REVISED CODE OF WASHINGTON - RCW'S

7.80.90 HEARINGS- RULES OF PROCEDURE-COUNSEL. (Effective January 1, 1989). (1) Procedures for the conduct of all hearings provided in this chapter may be established by rule of the supreme court. (2) Any person subject to proceedings under this

chapter may be represented by counsel...

7.80.160 NOTICE, FAILURE TO SIGN, NONAPPEARANCE FAILURE TO SATISFY PENALTY. (Effective January 1, 1989.) (1) a person who fails to sign a notice of civil infranction is guilty of a misdemeanor...

9A.04.110 DEFINITIONS (26) "Threat" means to communicate, directly or indirectly the intent:... (c) To subject the person threatened or any person to physical confinement or restraint; or (d) to accuse any person of a crime or cause criminal charges to be instituted against any person; or... (g) to testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or (h) to take wrongful action as an official against anyone or anything, or wrongfully withhold official action, or cause such action or withholding; or...

(j) to do any other act which is intended to harm substantially the person threatened or another with respect to his health, safety, business, financial condition, or personal relationships;

9A.46.020 DEFINITIONS--PENALTIES. (a) A person is quilty of harrassment if:...(b) The person by words or conduct places the person threatened in reasonable fear that the threat will be carried out.

9A.46.030 PLACE WHERE COMMITTED. Any harassment offense committed as set forth in RCW 9A.46.020 may be deemed to have been committed where the conduct occurred or at the place from which the threat or threats were made or at the place where the threats were received.

9A.72.020 PERJURY IN THE FIRST DEGREE. (1) A person is guilty of perjury in the first degree if in any official proceeding he

makes a materially false statement which he knows to be false under an oath required or authorized by law...

9A.72.040 FALSE SWEARING. (1) A person is guilty of false swearing if he makes a false statement, which he knows to be false, under an oath required or authorized by law...

9A.72.090 BRIBING A WITNESS (1) A person is guilty of bribing a witness if he offers confers, or agrees to confer any benefit upon a witness or a person he has reason to believe is about to be called as a witness in any official proceeding or upon a person whom he has reason to believe may have information relevant to a crominal investigation, with intent to: (a) Influence the testimony of that person; or (b) Induce that person to avoid legal process summoning him to testify; or (c) Induce that

person to absent himself from an official proceeding to which he has been legally summoned.

9A.72.120 TAMPERING WITH A WITNESS. (1) A person is guilty of tampering with a witness if he attempts to induce a witness or person he has reason to believe is about to be called as a witness in any official proceeding or a person whom he has reason to believe may have information relevant to a criminal investigation to: (a) Testify falsely or, without right or privilege to do so, to withhold any testimony; or (b) Absent himself from such proceedings...

9A.80.010 OFFICIAL MISCONDUCT. (1) A public servant is guilty of official misconduct if, with intent to obtain a benefit or to deprive another person of a lawful right or privilege: (a) He intentionally commits

an unauthorized act under color of law; or (b) He intentionally refrains from performing a duty imposed upon him by law...

19.86 UNFAIR BUSINESS PRACTICES-CONSUMER PROTECTION (Inclusive).

19.86.010 DEFINITIONS. (2) "Trade" and "commerce" shall include, the sale of assets or services...

19.86 MONOPOLIES AND ATTEMPTED MONOPOLIES DECLARED UNLAWFUL. It shall be unlawful for any person to monopolize, or attempt to monopolize, or combine or conspire with any other person or persons to monopolize any part of trade or commerce.

46.20.190 LICENSE IN IMMEDIATE POSSESSION AND DISPLAYED ON DEMAND. Every licensee shall have his driver's license in his immediate possession at all times when operating a motor vehicle and shall display the same upon demand to any police officer

or to any other person when and if required by law to do so..

46.63.080 HEARINGS--RULES OF PROCEDURE-COUNSEL. (1) Procedures for the conduct of all hearings provided for in this chapter may be established by rule of the supreme court. (2) Any person subject to proceedings under this chapter may be represented by counsel...

9.73.060 VIOLATING RIGHT OF PRIVACY-CIVIL ACTION FOR LIABILITY FOR DAMAGES. Any person who, directly or by means of a detective agency or any other agent, violates the provisions of this chapter shall be subject to legal action for damages, to be brought by any other person claiming that a violation of this statute has injured his business, his person, or his reputation. A person so injured shall be entitled to actual damages,

including mental pain and suffering endured by him on account of violation of the provisions of this chapter, or liquidated damages computed at the rate of one hundred dollars a day for each day of violation, not to exceed one thousand dollars. and a reasonable attorney's fee and other costs of litigation.

WASHINGTON COURT RULES

CRIMINAL RULES FOR COURTS OF LIMITED JURISDICTION (CrRLJ) 3.3(a) RESPONSIBILITY OF COURT. It shall be the responsibility of the court to ensure a trial in accordance with this rule to each person charged with having committed a crime.

3.3(i) DISMISSAL WITH PREJUDICE. A criminal charge not brought to trial within the time period provided by this rule shall be dismissed with prejudice.

7.4(A)(3) ARREST OF JUDGMENT. Judgment may

be arrested on the motion of the defendant for the following causes...(3) insufficiency of the proof of a material element of the crime

4.71(1)(i) & (viii) DISCOVERY PROSECUTING ATTORNEY'S OBLIGATIONS. (1) Except as otherwise provided by protective orders or as to matters not subject to disclosure, the prosecuting authority shall, upon written demand, disclose to the defendnat the following material and information within his or her possession or control concerning: (i) the names and addresses of persons whom the prosecuting authority intends to call as witnesses at the hearing or trial, together with any written or recorded statements and the substance of any oral statements of such witnesses;... (iii) any reports or statements of experts made in connection with the par-

ticular case, including results of physical or mental examinations and scientific tests, experiments or comparisons;...

6.14 IMMUNITY. In any case, the court on motion of the prosecuting authority may order that a witness shall not be excused from giving testimony or producing any papers, documents or things, on the ground that such testimony may tend to incriminate or subject the witness to a penalty or forfeiture arising from the commission of a gross misdemeanor, misdemeanor, or traffic infraction; but the witness shall not be prosecuted or subjected to criminal penalty or forfeiture for or on account of any gross misdemeanor, misdemeanor, or traffic infraction concerning which the witness has been ordered to testify pursuant to this rule. If such testimony may tend to incriminate or subject the witness

to a penalty or forfeiture arising from the commission of a felony, immunity may only be sought with the concurrence of the prosecuting authority in whose county the offense occurred. The witness may nevertheless be prosecuted for failing to comply with the order to answer, or for perjury or the giving of false evidence.

8.9(b) DISQUALIFICATION OF JUDGE, AFFIDAVIT OF PREJUDICE. The judge shall also enter an order of disqualification under the provisions of this rule if, before the judge makes a discretionary ruling and before the trial is commenced, a party files an affidavit alleging that the party cannot have a fair and impartial trial by reason of the interest or prejudice of the judge or for other ground provided by law. Only one such affidavit shall be filed on behalf of the same party in the case

and the affidavit shall be made as to only one of the judges of the court. All rights to an affidavit of prejudice will be considered waived when filed more than 10 days after the defendant's plea is entered or arraignment is waived, unless the affidavit alleges a particular incident, conversation or utterance by the judge, which was not known to the party within the 10-day period. In multiple judge courts, or when a pro tempore or visiting judge is designated as the judge, the 10 day period shall commence on the date that the party has actual notice of assignment or reassignment to a designated judge.

RULES FOR APPEAL OF DECISIONS OF COURTS OF LIMITED JURISDICTION (RALJ) 9.1(e) LIMITATION OF MODIFICATION OF SENTENCE. The superior court shall not modify the sentence imposed in a criminal case unless

the sentence is incorrect as a matter of law.

RULES OF PROFESSIONAL CONDUCT (RPC) SCOPE OF REPRESENTATION...1.2(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law...

CANONS OF PROFESSIONAL ETHICS WERE ADOPTED BY THE AMERICAN BAR ASSOCIATION IN 1908.

The 1908 Canon 32 provided that: "no client corporate or individual, however powerful, nor any cause, civil or political, however important, is entitled to receive nor should any lawyer render any service or

advice involving disloyalty to the law whose ministers we are, or disrespect of the judicial office, which we are bound to uphold, or corruption of any person or persons exercising a public office or private trust, or deception or betrayal of the public...He must...observe and advise his client to observe the statute law..." DISCIPLINARY RULE 7-102 OF THE MODEL CODE OF PROFESSIONAL RESPONSIBILITY (1980), entitled "REPRESENTING A CLIENT WITHIN THE BOUNDS OF THE LAW," provides that..."(a) In his representation of a client, a lawyer shall not: (4) Knowingly use perjured testimony or false evidence. (7) Counsel or assist his client in conduct that the lawyer knows to be illegal or fradulent." EVIDENCE, 2nd Ed., State and Fed. Rules, Paul F. Rothstein, Chap. 1, pg. 6,2nd paragraph: DISTRUST OF THE JURY AS THE

BASIS OF MUCH OF EVIDENCE LAW: PREJUDICE AS A COUNTERWEIGHT TO RELEVANCY... Many (if not most) of the exclusionary rules, guidelines, or standards of evidence, and exclusionary acts of discretion of judges where permitted, exclude relevant evidence on the rationale that juries would be inclined to give the particular piece or class of evidence more effect than they ought. That is, the evidence is "prejudicial", and by that is meant that juries could not be trusted to give it its ligical, rational weight, or to perceive that it had none, but instead would, perhaps because of the emotional impact of the evidence, allow it to be more persuasive or influential than they should. This can happen where the evidence has some warranted weight as well as where it has none, so long as there is the danger

that the jury will not evaluate it properly but will over-inflate its role to an extent that renders the trial better off without the evidence.

EVIDENCE, supra, pg. 10, 3rd paragraph. Evidence rules, standards, and exercises of discretion are often based on (or call for the judge to make) a balancing of probativity (i.e., relevance or logical tendency to prove) against prejudice and other factors phrased in various ways but frequently including protraction, surprise, confusion, misleadingness and cumulativeness.

HOUSE BILL REPORT EHB 1459. Seth Fine, Mr. Chairman, Members of the Committee. I am Seth Fine, I'm Deputy Prosecuting Attorney for Snohomish County and I'm also testifying on behalf of the Washington Association of Prosecuting Attorneys. To understand

the kind of problems that this bill is designed to address we have to go back about three years...There were two things in the original version of the provision: that it was to be admitted without any comment, and a provision that there was to be a jury instruction that no inferences were to be drawn. And then in the last session the latter provision, the provis ion that there was was to be a jury instruction that no inferences were to be drawn. And then in the last session the latter provision, the provision about the jury instructions, was deleted from the statute ...And now the court, looking at the first version of this statute has said that those provisions make the evidence irrelevant because under that version of the statute there's a jury instruction that there's no inferences, therefore the breathalyzer

refusal evidence doesn't mean anything and so it shouldn't be admitted at all. That footnote says that the amendment which created the present version of the law make the law even more unclear...It is also unclear what inferences the jury can draw from the refusal evidence when there is to be no comment So that footnote creates a fairly strong hint that the court will also strike down, or the present version of the statute, if that issue is presented, when the issue comes before them...But the question of the admissibility of the refusal itself is a serious problem and in need of some correction...

SPOKANE MUNICIPAL TUESDAY OCTOBER 18, 1988, 5:45p

DEFENDANT CASE: DO53343 SPD

DAVIS, CAROL A. AGENCY NO: 0288042359

E. 544 DALTON CRIMINAL TRAFFIC

SPOKANE, WA. 99207

OFFICER 1088 SPD ROBINSON, R.E.

CHARGES VIOLATION DATE: 06/06/88

1. DRIVING WHILE INTOXICATED M16.61.502

2. FAIL STOP & GIVE INFORMATION M16.61.022

PROCEEDINGS 06/06/88 CASE FILED ON 06/06/88.

JAIL REL

ARR SCHEDULED FOR 6/28/88 AT 1:30P IN ROOM 2

WITH RRT

06/07/88 TANKSLEY INCL MISD DO53344 ALSO INFR

DO53342

06/28/88 C/TANKSLEY

06/29/88 JTR SCHEDULED FOR 8/24/88 AT 9:00A

IN ROOM E WITH RRT

PTR SCHEDULED FOR 8/19/88 AT 9:00A IN ROOM E

WITH RRT

JTR RESCHEDULED TO 8/24/88 AT 9:00A IN ROOM 4

EXHIBIT A

WITH RRT

08/19/88 A/TANKSLEY-JUDGE WILL KEEP FILE-LEAVE ON JURY DTE

09/02/88 MOT SCHEDULED FOR 9/9/88 AT 9:00A IN ROOM 5 WITH RRT

JTR SCHEDULED FOR 9/21/88 AT 9:00A IN ROOM 4 WITH RRT

09/12/88 DEF FILED SUBPOENAS TO JL-POLICE ACADEMY & DR JAMES C. WAVRA O.D.

09/21/88 JTR RESCHEDULED TO 10/19/88 AT 9:00A IN ROOM 4 WITH RRT

A/TANKSLEY

ACCOUNTING SUMMARY

CITATION AMOUNT: 750.00

ADDITIONAL CASE DATA

PERSONAL DESCRIPTION SEX: F DOB: 02/18/53

DR. LIC. NO.: DAVISCA477CQ STATE: WA

EXPIRES: 91

HEIGHT: 5'06 WEIGHT: 135 EYES: BRO HAIR: BRO

RACE: W

VEHICLE YEAR....: 72 MAKE: CAD MODEL: DEV

STYLE: 4DR COLOR: BLU

SCHEDULED HEARING SUMMARY

ARRAIGNMENT ON 06/28/88 0130P IN ROOM 2 WITH RRT

PRE TRIAL JRY PRO SE ON 08/19/88 0900A IN ROOM E WITH RRT

JURY TRIAL ON 08/24/88 0900A IN ROOM 4 WITH RRT

MOTION HEARING TRIAL ON 09/09/88 0900A IN ROOM 5 WITH RRT

JURY TRIAL ON 10/19/88 0900A IN ROOM 4 WITH RRT

END OF THE DOCKET REPORT FOR THIS CASE.

1. GUILTY - $1,000.00/$600.00 susp. 365da/364da susp. Pay $400.00 by Dec. 30, 1988. Jail Report Date - Nov. 17, '88, 8:00 am.
2. GUILTY - $100.00 incl cost/all susp. 5da/5da susp.
3. SPEEDING INFRACTION GUILTY - $25.00 incl. cost 24 mo. U.S.P.

EXHIBIT A

SUPERIOR COURT OF WASHINGTON

COUNTY OF SPOKANE

CITY OF SPOKANE, Respondent,	)
v.	) CASE NO.88-101070-7
CAROL A. DAVIS, Appellant.	) ORDER DENYING APPELLANT'S MOTION TO SUPPRESS AND/ OR SANCTIONS AND OBJECTION TO DELAY

I. BASIS

City of Spokane, Respondent moved the court for: to deny appellants Motions Dismiss all charges against appellant, Motion To Suppress Respondent's Certification, Motion For Sanction, and Objection to delay of appeal.

II. FINDING

After reviewing the case record to date, and the basis for the motion, the court finds that: Good cause exists.

III. ORDER

IT IS ORDERED that: Appellant's Motions to

Dismiss all charges against her, Suppress Certifications, Sanctions and Object to dealy of Appeal be denied.

DATED 2/17/89 _____
Judge John A. Schultheis

Presented by:

_____
Robert A. Jalovi

SUPERIOR COURT, STATE OF WASHINGTON

COUNTY OF SPOKANE

CITY OF SPOKANE, RESPONDENT/PLAINTIFF, vs. CAROL A. DAVIS, APPELLANT/DEFENDANT	NO. 88 1-01070-7 ORDER OF DENIAL OF APPEAL

I. BASIS

The Respondent, City of Spokane moved the court for Denial of Appellant issues regarding:

1. Court rule and constitutional speedy trial.
2. Prejudicial testimony
3. Miranda Warnings before field sobriety tests,
4. Motions not asserted in the Notice of Appeal, and
5. Prejudicial error of jury instruction No.7.

II. FINDING

After reviewing the case of record to date, and the basis for the motion, the court finds that: Good cause exists and

1. The trial was within the court rule and constitutional speedy trial perameters because trial court's continuance from 8-24-88 to 9-21-88 was proper under CrRLJ 3.3(h)(2) and excluded from speedy trial time under CrRLJ 3.3(g) and, delay was not presumptively prejudicial,

2. No motion for new trial at trial court to address prejudiced testimony;

3. Field sobriety test are non-testimonial for purposes of Miranda Warnings,

4. Motions not asserted in Notice of Appeal are not considered, and

5. Jury instruction No. 7 was harmless because it was favorable to the Defendant.

III. ORDER

It is ordered that the Defendant s appeal regarding.

1. Court rule and constitutional speedy trial.

2. Prejudicial testimony.

3. Miranda Warnings before field sobriety tests.

4. Motions not asserted in the Notice of Appeal, and

5. Prejudicial error of jury instruction No. 7 be denied and remanded to Municipal Court.

DATED: 3/7/89

Michael E. Donohue, Judge

Presented by:

Robert A. Jalovi
Assistant City Attorney
WSB No. 15512

Exhibit C

THE COURT OF APPEALS OF THE STATE OF

WASHINGTON DISTRICT III

CITY OF SPOKANE,	)	
	)	
Respondent,	)	NO. 9915-6-III
	)	
v.	)	ORDER DENYING MOTION TO
	)	
CAROL A. DAVIS,	)	MODIFY COMMISSIONER'S
	)	
Petitioner.	)	RULING

The Court has considered petitioner's Motion to Modify the Commissioner's Ruling of July 26, 1989; that motion is denied.

DATED this 15th day of September, 1989.

FOR THE COURT:

Chief Judge

THE COURT OF APPEALS OF THE STATE OF

WASHINGTON, DIVISION III

CITY OF SPOKANE,	)
	) NO.9915 6-III
Respondent,	)
	) COMMISSIONER'S RULING
v.	)
	)
CAROL A. DAVIS	)
	)
Petitioner.	)

Having considered Carol A. Davis' motion for discretionary review of a Spokane County Superior Court decision affirming her District Court convictions of driving while intoxicated and failing to sign a traffic infraction; having considered the record, file and oral argument of Ms. Davis and counsel; and being of the opinion Ms. Davis has failed to establish any of the grounds for review pursuant to RAP 2.3(d) because:

1. She was accorded a speedy trial within the requirements of CrRLJ 3.3(c)(1) because the period was properly extended, without prejudice to Ms. Davis, in accordance with CrRLJ 3.3(g),(h), and in a sound exercise of the court's discretion

EXHIBIT E

given the voluminous motions filed by Ms. Davis, the unavailability of the arresting official, Ms. Davis' affidavit of prejudice against the District Court bench and Judge Tanksley's familiarity with her case. See State v. Gulov, 104 Wn. 2d 412, 426-27, 705 P.2d 1182 (1985); In Re the Marriage of Nicholson,17 Wn.App. 110, 561 P.2d 1116 (1977).

2. Her constitutional speedy trial claim is negated by her failure to demonstrate prejudice to any significant degree in her ability to present her case. See State v. Parris, 30 Wn.App. 268, 274, 633 P.2d 914 (1981), affid, 98 Wn.2d 140, 654 P.2d 77 (1982).

3. Well settled law establishes she has no right to lay counsel of choice. Seattle v. Shaver, 23 Wn. App. 601, 597 P.2d 935 (1979).

4. The District Court had jurisdiction over Ms. Davis and the offense charged by virtue of RCW 3.46.030 and CrRLJ 2.1 and (her consent to the jurisdiction of the court is irrelevant.) The

(Court had the power to determine the action and personal jurisdiction over Ms. Davis by issuance of the citations alleging violation of municipal ordinances.

5. Ms. Davis' assertion of rights :sua sponte" was a request that the court notify her" ... of any violation of any right, whether secured/protected at the Common Law, in the Constitution of the United States or the State of Washington, Federal, State or County statutes, or by the rules of procedure." (Motion for Discretionary Review, p. 9) The request is "patently frivolous". unsupported by any reasonable authority and practically impossible to grant because it requires the court to assume the role of her counsel.

6. Ms. Davis' first affidavit of prejudice against Judge Tanksley was untimely; the second, although it noted an adverse decision by the judge and the presence of several persons at the City's counsel table, did not demonstrate prejud-

EXHIBIT E

ice. The refusal to honor either affidavit did not demonstrate prejudice. The refusal to honor either affidavit did not violate CrRLJ 8. 9.

7. The mode of procedure and the number of jurors which may be employed in courts of limited jurisdiction may properly be established by court rule. Seattle v. Hessler, 98 Wn.2d 73, 653 P.2d 631 (1982); Seattle v. Filson, 98 Wn.2d 66, 653 P.2d 608 (1982); see also CrRLJ 1.6; 6.1.1(c). A jury of six members in Ms. Davis' case, and the procedures employed at trial satisfy the constitution. The denial of her request for an undefined "common law" trial and a jury of 12 does not conflict with established law.

8. Ms. Davis' complaint she was denied due process is unsupportable in view of the resolution of all issues against her on this review.

9. Complaints about the veracity of the witnesses are matters to be raised to the trier of fact. Neither the Superior Court nor this Court can constitutionally retry a case. Apparent in-

consistencies in the testimony of the witnesses do not establish perjury, and, instead, are matters to be addressed to the jury. See State v. Black, 100 Wn.2d 793, 802, 676 P.2d 963 (1984).

10. Whether the bar association is a mono poly has nothing to do with the validity of Ms. Davis' convictions. She chose not to be represented by a lawyer: she wanted lay counsel of her choice or to represent herself. See Seattle v. Shaver, supra.

11. Whether driving is a privilege or a right has nothing to do with Ms. Davis' convictions for driving while intoxicated and failing to sign a traffic citation. To the extent the issue may actually be involved in this matter, it is settled by Spokane v. Port, 43 Wn.App 273, 716 P.2d 945 (1986).

12. Field sobriety tests are not testimonial in nature and need not be preceded by Miranda

EXHIBIT E

warnings. Such tests do not produce contraband or constitute an admission of its knowledge so as to fall within a narrow exception of the rule that physical acts are not testimonial. See State v Franco,96 Wn.2d 816, 639 P.2d 1320 (1982); see also State v. Wethered,110 Wn.2d 466, 755 P.2d 797 (1988).

13. Instruction No. 7 which prevented the jury from drawing any inference from the fact no evidence of chemical analysis of Ms. Davis' breath or blood was admitted was not prejudicial and was consistent with the court's decision prohibiting the admission of evidence of Ms. DAvis' refusal to take the breathalyzer test. The jury is presumed to follow the court's instructions. Affidavits suggesting the contrary cannot be considered for the first time on review.

14. The prosecutor's call to witnesses advising them she would be requesting a continuance on the day they were scheduled to appear for trial is not tampering with witnesses or their testimony

nor has any prejudice been shown from the contact. Consulting with witnesses and advising them of the questions likely to be asked and the nature of the issues and proceedings is neither unusual nor unethical. Nothing in the excerpts of the District Court record supports Ms. DAvis' contention the City's witnesses lied, let alone that the prosecutor caused them to falsely testify. That the witnesses testified in a manner prejudicial to Ms. Davis or related a perception of the facts dif ferent from hers does not render their testimony false.

15. The apparent failure of the prosecutor to provide Ms. Davis with a copy of the fingerprinting form, even if a violation of the dis covery rules, was not prejudicial since Ms. Davis in her Superior Court bried, admitted obtaining a copy and showed no prejudice. See CrRLJ 47. (g)(7).

16. The affidavtis of Leeann V. Hillman, Michael W. West and Dorian R. Chastain were not

EXHIBIT E

submitted to the trial court and could not, therefore, be considered for the first time on appeal to the Superior Court and will not be considered for the first time on a motion for discretionary review after the appeal.

The motion for discretionary review is denied.

July 26, 1989.

Commissioner Frank V. Slak, Jr.

Exhibit E

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

CITY OF SPOKANE, Respondent, v. CAROL A. DAVIS, Petitioner.	CERTIFICATE OF FINALITY No. 9915-6-III Spokane County No. 88-1-01070-7

The State of Washington to: The Superior Court of the State of Washington In and for Spokane County

This is to certify that the ruling of the Court of Appeals of the State of Washington, Division III, filed on July 26, 1989 became final on February 7, 1990, no further review having been requested.

cc: Carol A. Davis
Robert A. Jalovi
The Hon. Michael E. Donoheu

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Spokane,

EXHIBIT F

this 14th day of February, 1990.

Joyce J. Mc
Clerk of the Court of Appeals,

State of Washington, Div. III

Exhibit F

THE SUPREME COURT OF WASHINGTON

CITY OF SPOKANE,	)
	) NO. 56582-1
Respondent	)
	)RULING DENYING MOTION FOR
v.	)
	)DISCRETIONARY REVIEW
CAROL A. DAVIS,	)
	)
Petitioner.	)

Carol A. Davis was convicted in district court of driving while intoxicated and refusing to sign a traffic infraction. The convictions were affirmed on Ms. Davis' RALJ appeal to Spokane County Superior Court, and the Court of Appeals denied her motion for discretionary review. Ms. Davis now moves for discretionary review by this court.

Ms. Davis does not frame her motion in terms of the applicable criteria for granting review, set forth in RAP 13.5(b). Rather, she reargues the substance of 17 issues which she raised below, ranging from assertions that the Bar Association is an unconstitutional monopoly to a claim that driving is a right and not a privilege. Given

EXHIBIT 6

that each of these issues is individually and cogently addressed in Commissioner Slak's ruling below, it is unnecessary here to re-explain why they have no merit. Quite simply, the Court of Appeals was justified in concluding that this case did not qualify for review under the standards of RAP 2.3(d). Review by this court is similarly not warranted.

The motion for discretionary review is denied.

Dated at Olympia, Washington, November 17,1989.

_____
COMMISSIONER

Exhibit G

THE SUPREME COURT OF WASHINGTON

CITY OF SPOKANE,	)	
	)	No. 56582-1
Respondent,	)	
	)	ORDER DENYING MOTION
v.	)	
	)	TO MODIFY COMMISSIONER'S
CAROL A. DAVIS,	)	
	)	RULING
Petitioner.	)	

This matter came before Department II of the Court on its February 6, 1990, Motion Calendar on Petitioner's Motion to Modify Commissioner's Ruling. Department II having considered the motion and the files herein;

Now, therefore, it is hereby

ORDERED:

That Petitioner's Motion to Modify Commissioner's Ruling is denied.

DATED at Olympia, Washington this 7th day of February, 1990.

_____
CHIEF JUSTICE

Exhibit H